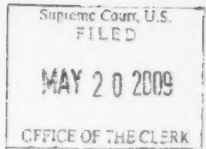


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No. 08-1018



In The

Supreme Court of the United States

The State of Ohio,
Petitioner,
v.
Thomas L. Veney,
Respondent.

On Petition for Writ of Certiorari to the

Supreme Court of Ohio

**BRIEF FOR THE RESPONDENT IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

The respondent takes issue with petitioner's list of questions presented. It is the respondent's position that no constitutional questions are presented. This is not a case, as suggested by petitioner, dealing with whether or not *Boykin v. Alabama*, 395 U.S. 238 (1969), requires trial courts to provide specific oral advisements and to obtain specific waivers regarding constitutional rights waived by entering guilty pleas. This is a case dealing with the enforcement of an Ohio law that requires the trial courts to personally address and inform the defendants of these rights and to determine that the defendants understand them. As such, no constitutional questions whatsoever are presented herein.

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THIS COURT HAS NO JURISDICTION

The respondent takes issues with the petitioner's claim that this Court has jurisdiction to hear the issues presented by this case. This case represents nothing more than the Ohio Supreme Court exercising its supervisory power over the lower courts by enforcing a rule promulgated by the Ohio Supreme Court governing the procedure the trial courts must follow when accepting pleas in criminal cases. Ohio has a rule of procedure that requires courts to inform defendants of certain constitutional rights they are waiving by pleading guilty. The Ohio Supreme Court held that the trial courts must comply with this rule. Neither the rule nor its enforcement offends any constitutional provisions.

Until 1968, when the Modern Courts Amendment to the Ohio Constitution was adopted, Ohio court procedure was governed entirely by statute and case law. The Modern Courts Amendment required the Ohio Supreme Court to "prescribe rules governing the practice and procedure in all courts of the state." Pursuant to Ohio Constitution Article IV, §5(B), the Ohio Supreme Court promulgated the Ohio Rules of Criminal Procedure "to be followed in all courts of this state in the exercise of criminal jurisdiction." The rules "shall be construed and applied to secure the fair, impartial, speedy, and sure administration of justice, simplicity in procedure, and the elimination of unjustifiable expense and delay." Sec. Ohio Crim.R. 1.

This case called into question the construction and application of one of the criminal rules the Ohio Supreme Court promulgated and is also obligated to

enforce. Ohio Crim.R. 11(C)(2) sets forth the following pertinent guidelines for guilty pleas in felony cases:

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

* * *

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself. [Bold emphasis added]

The Ohio Supreme Court took this case because of conflict and confusion among the lower courts on how this provision should be enforced. Some courts had held that Crim.R. 11(C)(2)(c) had to be strictly complied with because it dealt with informing the defendant of constitutional rights. Other courts had held that strict compliance was only required while informing defendants of certain constitutional rights but that only substantial compliance was required with respect to the obligation to inform the accused that he was waiving his right to have the state prove his guilt beyond a reasonable doubt.

In Ohio, strict compliance does not mean that the exact words of the rule must be used. It means that the record must show that the trial court explained these rights in a manner reasonably intelligent to the defendant. *State v. Veney*, 120 Ohio St 3d 176, (2008) at ¶27, ¶29. Substantial compliance is a doctrine relied

upon in Ohio to excuse the state when it does not comply with the law. Substantial compliance is not a defense available to criminal defendants; it is a defense available to the state when the state fails to follow the very laws and rules that it created and is charged with enforcing. It is a euphemism for the "close enough for government work" standard. Substantial compliance means that the trial court does not have to actually follow the rules and actually address and inform the defendant of the rights as required by the rule. It is enough that a reviewing court can speculate from the totality of the circumstances that the defendant understood the rights that the trial court neglected to inform him of. [Id. at ¶15-16.]

The Ohio Supreme Court ruled in this case that:

{¶ 31} We hold that a trial court must strictly comply with Crim.R. 11(C)(2)(c) and orally advise a defendant before accepting a felony plea that the plea waives (1) the right to a jury trial, (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self-incrimination. When a trial court fails to strictly comply with this duty, the defendant's plea is invalid.

Thus this is a case where the Ohio Supreme Court, in its supervisory power over the courts in Ohio, was called upon to interpret and enforce a rule of procedure that it had properly promulgated. The Ohio Supreme Court held that the trial court had to comply with the rule as it was written. The Ohio Supreme Court has the jurisdiction and power to supervise the state courts of Ohio. This Court does not hold such power and has never sought to exercise supervisory power over the state courts in this manner. The only time that this Court intervenes is if the state

courts are enforcing rules of procedure that are repugnant to the Constitution or federal laws.

Thus the basic jurisdictional question presented by the ruling herein is very simple. The state is challenging the decision by the Ohio Supreme Court that the trial courts must actually comply with a state rule of procedure that requires trial judges to personally address defendants and inform them that by pleading guilty they are waiving certain constitutional rights, including the right to have the state prove their guilt beyond a reasonable doubt. How is such a decision repugnant to the Constitution and what constitutional rights does such a holding violate? Obviously states are free to adopt rules of procedure that are broader than those required by the Constitution and they are also free to adopt rules that are of no constitutional significance. This Court's jurisdiction can be invoked only if such rules or laws, or the enforcement thereof, are repugnant to the Constitution.

The Ohio Supreme Court's ruling did not offend any constitutional rights of the defendant. Thus the question remaining is what constitutional rights of the state were offended by this ruling. The state has no constitutional right for the trial court to ignore the plain meaning of a rule of law. There is no constitutional right of the state to coerce guilty pleas by keeping criminal defendant as uninformed of their legal rights as possible. Even if a state rule or law provides protection beyond that required by the Constitution, the state cannot complain about such a rule unless the rule actually violates the Constitution.

In *Dickerson v. United States*, 530 U.S. 428, 429, 120 S.Ct. 2326, 147 L.Ed.2d 405, (2000), this Court held that it "does not hold supervisory power over the state courts, *** as to which its authority is limited to enforcing the commands of the Constitution***." In *Smith v. Phillips*, 455 U.S. 209, 221, 102 S.Ct. 940, 71 L.Ed.2d 78, (1982), this Court held:

"Before a federal court may overturn a conviction resulting from a state trial...it must be established not merely that the [State's action] is undesirable, erroneous, or even "universally condemned," but that it violated some right which was guaranteed to the defendant by the Fourteenth Amendment."

Absent such a constitutional violation, it was error for the lower courts in this case to order a new trial. Even if the Court of Appeals believed, as the respondent contends, that prosecutorial misbehavior would "reign unchecked" unless a new trial was ordered, it had no authority to act as it did. Federal courts hold no supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension. *Chandler v. Florida*, 449 U.S., at 570, 582-583; *Cupp v. Naughten*, *supra*, at 146. No such wrongs occurred here. Accordingly, the judgment of the Court of Appeals is Reversed.

Likewise in *Dawud Majid Mu'min v. Virginia*, 500 U.S. 415, 422, 111 S.Ct. 1899, 114 L.Ed.2d 493 (1991), this Court stated:

Our cases dealing with the requirements of voir dire are of two kinds; those that were tried in federal courts, and are therefore subject to this Court's supervisory power, [citations omitted] and those that were tried in state courts, with respect to which our authority is limited to enforcing the commands of the United States Constitution. See *Turner v. Murray*, 476 U.S. 28, 106 S.Ct. 1683, 90 L.Ed.2d 27 (1986); *Ristaino v. Ross*, 424 U.S. 589, 96 S.Ct. 1017, 47 L.Ed.2d 258 (1976); and *Ham v. South Carolina*, 409 U.S. 524, 93 S.Ct. 848, 35 L.Ed.2d 46 (1973).

This Court has no jurisdiction to review state rules or laws under the claim that such laws provide protections greater than those provided by the United States Constitution. States, of course, are free to enact such laws. This Court has jurisdiction to intervene only to correct wrongs of constitutional dimension. This Court has no jurisdiction to tell the state courts how it should enforce its procedural rules as long as the enforcement does not violate any constitutional prohibitions. There are no constitutional prohibitions against a state court enforcing a rule that requires trial courts to advise a defendant that a guilty plea waives his right to have the state prove his guilt beyond a reasonable doubt. The enforcement of such a rule is not repugnant to the Constitution. In fact, many would conclude that such a rule is very respectful of the Constitution.

The petitioner claims that the constitutional provision involved in this case is the Due Process Clause of the Fourteenth Amendment which provides "nor shall any state deprive any person of life, liberty, or property, without due process of law ***." (See, Petition for Writ of Certiorari, Constitutional Provision Involved, p. 9). The Ohio Supreme Court's ruling did nothing to violate the Due Process Clause. The petitioner's complaint is not that the Ohio Supreme Court denied anyone due process of law but that it provided too much due process. This case hinges upon the enforcement of a state rule of procedure and this court has no jurisdiction to intervene unless the enforcement violated a constitutional provision. It did not.

Constitutional Provisions and Ohio Rules Involved in the Case

The Petitioner claims that its due process rights were violated but respondent takes issue with this claim. There are no due process rights that allow trial judges to ignore a rule of law requiring them to inform a defendant of the rights that are waived by a guilty plea. The state has no due process rights to keep a defendant uninformed of rights when a state law specifically provides that defendants must be informed of these rights.

This case only involves the enforcement of Rule 9(C) of the Ohio Rules of Criminal Procedure. The rule is set forth in the appendix at page A-1.

STATEMENT OF THE CASE

The respondent pled guilty to a charge of attempted felonious assault with a firearm specification. The prosecutor indicated that the respondent had confronted his wife and accused her of sleeping with his cousin. The prosecutor claimed that the respondent got a loaded gun and threatened to shoot her. The state indicated that the couple then left the bedroom and went downstairs where the respondent fired a shot into the wall. The respondent's wife then ran out of the house and heard several more shots. The respondent's wife was not actually shot during this encounter and, according to the prosecutor, the respondent's wife wanted him released from custody but based upon the seriousness of the charge the prosecutor was only willing to agree to the stated reduction of the charge.

The respondent was sentenced to two years of imprisonment with an additional three years for the firearm specification for an aggregate prison term of five years. He later filed an appeal from this judgment and the Court of Appeals

reversed his conviction on the grounds that the trial court had failed to advise the defendant of the state's obligation to prove his guilt beyond a reasonable doubt as required by Ohio law. The Court of Appeals further certified the case to the Ohio Supreme Court as a conflict since there was a dispute among the appellate districts of Ohio as to whether or not strict or substantial compliance to this rule was required.

The Ohio Supreme Court accepted the case as a conflict and ruled that the trial judges must strictly comply with the requirements in Crim.R. 11(C)(2)(c) and must explain all of the rights listed in the rule that a defendant waives by pleading guilty, in a manner reasonably intelligible to the defendant, including the right to have the state prove guilt beyond a reasonable doubt. The State of Ohio is now arguing that this ruling somehow violates the state's right to due process of law.

ARGUMENT

PURSUANT TO A DULY PROMULGATED OHIO RULE OF PROCEDURE, TRIAL COURTS, BEFORE ACCEPTING A GUILTY PLEA, MUST PERSONALLY ADDRESS THE DEFENDANT AND INFORM HIM THAT BY ENTERING THE PLEA THE DEFENDANT IS WAIVING HIS RIGHT TO REQUIRE THE STATE TO PROVE HIS GUILT BEYOND A REASONABLE DOUBT. THE TRIAL COURT MUST FURTHER DETERMINE THAT THE DEFENDANT UNDERSTANDS THIS ADMONITION. WHETHER OR NOT THE DUE PROCESS STANDARD OF ROYKIN V. ALABAMA REQUIRES SUCH AN ORAL ADVISEMENT IS IMMATERIAL TO THIS CASE BECAUSE OHIO LAW EXPRESSLY REQUIRES IT.

Guilty plea proceedings are crucial to the administration of justice. Most convictions are obtained through guilty or no contest pleas. Generally, at least 95% of felony convictions are obtained through such pleas.¹ In misdemeanor cases the percentage is even higher and approaches 99% in many municipal court systems. Since approximately nineteen out of every twenty felony convictions are obtained by pleas instead of trials, the criminal justice system has a vested interest in making sure that the plea process is conducted as fairly as possible.

There are those who evince little concern about the fairness of guilty plea proceedings because, after all, if the person pled guilty how unfair could any resulting conviction be? These folks are also likely to be people with little understanding of the pressure that the criminal justice system brings to bear upon innocent people to plead guilty and upon guilty people, who have been overcharged, to plead to offenses greater than were actually committed.

Some studies dealing with wrongful convictions have concluded that in over half of such cases the wrongful convictions were obtained as a result of coerced confession or guilty pleas.

Coerced guilty pleas are a problem in Ohio as well as the rest of the nation. An article in the Columbus Dispatch discussed wrongful convictions in several prominent central Ohio cases. In 75% of the cases, the wrongful convictions had been obtained through guilty pleas instead of trials.²

¹ FrontLine: The Plea, June 17, at 9 P.M. on PBS, as summarized <http://www.truthinjustice.org/the-plea.htm>

² Yarnall, *Struggling Over No Easy after Wrongful Conviction*, Columbus Dispatch, December 21, 1996, § K at 2.

Even guilty people face pressure to plead to charges that they are not guilty of because they were overcharged or facing multiple counts for the same conduct. They can be forced to enter pleas in order to minimize the consequences, even if this means pleading to charges greater than actually were committed. Some trial judges are known to charge a trial tax or excessive rent for the courtroom to those who lose.

The pressure on innocent people to plead guilty is immense. So is the pressure of a guilty person to plead to charges greater than he actually committed in order to avoid the consequences of trial. Ohio had recognized that injustice does occur as a result of the tremendous pressure imposed upon people to plead guilty and legal protections have been implemented to help ensure that guilty pleas are entered voluntarily and knowingly.

The Ohio Supreme Court, in accordance with the power granted it by the Ohio Constitution, promulgated rules to help ensure a degree of fairness when the courts accept guilty pleas. Ohio Rule of Criminal Procedure 11(C)(2) sets forth the following guidelines for guilty pleas in felony cases:

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and **shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:**

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of, and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, **and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.** [Bold emphasis added]

Thus, even if *Boykin v. Alabama* did not require an oral advisement of constitutional rights, as claimed by the petitioner, it does not matter because Ohio law expressly requires it.

This matter was brought to the Ohio Supreme Court's attention because of the issue of how this rule should be interpreted. Courts had held that the non-constitutional rights provided for in the rule did not have to be strictly complied with and that substantial compliance with respect to advising the defendants of the non-constitutional rights could suffice to fulfill the intent of the rule.

However an odd quirk developed in Ohio case law with respect to the standard of compliance regarding the constitutional rights set forth in Ohio Crim.R. 11(C)(2)(c). Some courts, including the Ohio Supreme Court, had held that strict compliance was required by the trial courts when advising the defendants of the constitutional rights the defendants were waiving by pleading guilty. However, other courts treated the rights a little differently. Some had held that trial courts only had to strictly comply with the rule with respect to some of the constitutional

rights and that substantial compliance was adequate with respect to the other constitutional rights.

This reasoning was based, in part, upon the fact that the courts had observed that in *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274, (1969), the Court had mentioned only three of the five listed constitutional rights. The courts noted that since *Boykin* had not specifically stated that the defendant should be advised that a guilty plea is a waiver of his right to have the state prove him guilty beyond a reasonable doubt, this right did not rise to the same level of dignity as the other constitutional rights listed in the rule and that substantial compliance with this part of the rule was all that was required.

Other courts had rejected this reasoning by noting that at the time *Boykin* was decided in 1969 there was some question about whether or not the right to have the state prove guilt beyond a reasonable doubt was a federal constitutional right that extended to the states through the Due Process Clause. The courts noted that this issue was clearly resolved in *In re Winship*, 397 U.S. 358, 90 S.Ct. 1063, 25 L.Ed.2d 368, (1970), when the Court held that this basic and fundamental federal constitutional standard also applied to the states. The courts noted that it would make no sense to hold that the courts had to strictly comply with the rule with respect to some of the constitutional rights but only had to substantially comply with the admonitions regarding the other two constitutional rights. The courts reasoned that it made no sense to hold that a person must be strictly informed that he has a right to confront witnesses before his plea can be properly entered but that

the plea can be properly entered if the trial court fails to inform him that a guilty plea is a waiver of his right to have a trial where the state must prove his guilt beyond a reasonable doubt.

The Ohio Supreme Court held that it was going to apply the same standard of enforcement to all of the constitutional rights contained in the rule. The court held in its syllabus and also at ¶ 31:

We hold that a trial court must strictly comply with Crim.R. 11(C)(2)(c) and orally advise a defendant before accepting a felony plea that the plea waives (1) the right to a jury trial, (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self-incrimination. When a trial court fails to strictly comply with this duty, the defendant's plea is invalid. (Crim.R. 11(C)(2)(c), applied.)

Thus this case involves nothing more than the Ohio Supreme Court's determination of how a state rule is to be interpreted, applied, and enforced. This does not become a constitutional issue unless the ruling or its application offends a constitutional provision. As previously noted, the Ohio Supreme Court's ruling did not offend any constitutional provision. If anything, it acted with respect to important constitutional rights.

The state has no constitutional right to keep defendants uninformed of their constitutional rights that would trump the application of Ohio's properly promulgated rule of law. If the court had ruled that trial judges did not have to strictly comply with the rule, then there would be an issue under existing case law as to whether the defendant's constitutional rights were violated. But even if there

existed no constitutional rights regarding knowing and voluntary guilty pleas, the state would be free to enact rules regarding the procedure to be followed when accepting such pleas and the state could not argue that it had a constitutional right not to follow the state law because the United States Constitution did not mandate such a procedure.

REASONS FOR DENYING THE PETITION

As previously noted, the Ohio Supreme Court's decision requiring strict compliance with a portion of one of its rules of procedure does not violate any constitutional provision. Any due process argument would have to hinge upon the premise that the strict compliance ruling places too much of a burden upon the trial courts of Ohio and would result in unfair or unjust outcomes offensive to the interest of justice. This is just not the case.

It is not asking too much of trial courts, who have taken oaths to uphold and enforce the law, to comply with a rather simple rule of procedure designed to impart fairness into guilty plea proceedings. In many respects this case is not so much about the rights of the accused as it is about the fundamental process and the dignity of the courts. The Ohio rule is simple. It states that the court shall inform the defendant of five important constitutional rights he is waiving by entering a guilty plea. There is nothing inherently difficult about complying with this rule. It just requires simple reading from a form that all judges have or could easily acquire. A fourth grader could comply with the rule with a few minutes of training. If a judge gets easily confused or loses track of what he or she has read, the form

could be modified to include check marks for each item. If up to 95% of felony convictions are obtained through pleas and it is so simple to inform the defendants of the critical rights they are waiving by entering the plea, why should the Ohio Supreme Court, in its supervisory capacity, not enforce the rule? In the military, even minor rules are enforced so that in critical situations orders will be followed. This is just basic discipline. This is not a minor rule. This is the rule by which most felony convictions are obtained and where defendants waive their most important constitutional rights and safeguards. It might be the single most important rule to our criminal justice system given the inherently coercive nature of the plea process and the fact that almost all of the convictions are obtained through this process.

Thus even if the state could show a constitutional violation, granting a writ of certiorari is still a matter of judicial discretion that will only be granted for compelling reasons under Rule 10 of the rules of this Court. The Ohio Supreme Court held that trial courts should comply with the Ohio rule that requires the trial courts to actually advise defendants that by entering a guilty plea they are giving up (1) the right to a jury trial, (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self-incrimination. The petitioner, the Great State of Ohio, is asking this Court to intervene and relieve the trial courts of this easily fulfilled obligation, which it claims to be unconstitutional. Assuming that it is unconstitutional for Ohio to

promulgate and enforce such a rule of procedure, there is still no compelling reason to consider this case. It is no large burden for the trial courts to strictly comply with this rule of law and most courts do it very simply and expeditiously.

The importance of the issues involved in a case is of major significance in determining whether a writ of certiorari should issue. This Court does not have the time to give full consideration to all cases presenting issues. It must necessarily confine itself to those that reflect the more important legal problems within the realm of its jurisdiction. The problems should be "beyond the academic or episodic." *Rice v. Sioux City Cemetery*, 349 U.S. 70 (1955). Importance is a relative factor for this Court to consider. Historically this Court has looked at the importance of the case with respect to its impact upon society and its effect upon the development of the law. If this Court refuses to grant certiorari what is the worst that will happen? Just a few judges in Ohio, who have not been complying with a very simple procedure, will have to start complying with the law. There is no great or compelling harm in having judges comply with simple rules of procedure designed to safeguard fundamental constitutional rights.

Additionally, a writ of certiorari should not be granted in this case because this matter is in grave danger of becoming moot or of losing its case or controversy status. The respondent received a five-year prison sentence. He is still being incarcerated on these charges and is being held without bail until this matter is resolved. In Ohio, there is no statutory speedy trial rights following an appeal, according to the state of Ohio and the judge involved in the case. This means that

every day that goes by, the interest the respondent has in prevailing herein and of preserving his victory in the Ohio Supreme Court is diminished.

The respondent originally wanted to withdraw his plea because he felt that he was not guilty of the charges because of the lack of any intent to actually cause harm to his wife, an essential element of the crime. However, the respondent is now in his fourth year of a five-year sentence. It is becoming dangerously close to the point where it would be in the defendant's best interest to have the original sentence re-instated rather than to prevail and later go to trial and risk receiving a substantially greater sentence (up to twenty-one years of actual incarceration, less time served), if he lost. Thus if this Court did grant the writ, it would probably be in the respondent's best interest to lose so that he could have the original sentence re-instated rather than to go to trial and risk additional years of imprisonment.

The state of Ohio has managed to keep the respondent incarcerated for well over three years without a trial and without a proper guilty plea proceeding. If this Court grants this writ, the respondent will have no interest in prevailing and this case will no longer have the adversarial nature required by the case or controversy mandate.

CONCLUSION

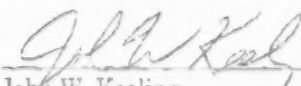
The petitioner went out of its way to obfuscate the fact that this case hinges entirely upon the application of a state rule of procedure requiring trial courts to actually inform defendants of certain constitutional rights that a plea of guilty waives. The Ohio Supreme Court ruled that trial courts must strictly comply with

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this rule. The Ohio Supreme Court's decision rests entirely upon independent state grounds. Thus even if a case could be made that these admonitions are not required under federal law, the Ohio rule of procedure still requires that the trial judge must personally address the defendant and inform him of these rights. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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RULE 9(C) OF THE OHIO RULES OF CRIMINAL PROCEDURE

(C) Pleas of guilty and no contest in felony cases.

(1) Where in a felony case the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to Crim.R. 44 by appointed counsel, waives this right.

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

THE STATE OF OHIO, APPELLANT, v. VENEY, APPELLEE.

[Cite as *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200.]

Criminal procedure—Colloquy upon guilty or no-contest plea—Trial court's failure to comply strictly with Crim.R. 11(C)(2)(c) invalidates plea

(Nos. 2007-0656 and 2007-0657 – Submitted May 7, 2008 – Decided

October 9, 2008.)

APPEAL from and CERTIFIED by the Court of Appeals for Franklin County,

No. 06AP-523, 2007-Ohio-1295.

SYLLABUS OF THE COURT

A trial court must strictly comply with Crim.R. 11(C)(2)(c) and orally advise a defendant before accepting a felony plea that the plea waives (1) the right to a jury trial, (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self-incrimination. When a trial court fails to strictly comply with this duty, the defendant's plea is invalid. (Crim.R. 11(C)(2)(c), applied.)

MOYER, C.J.

[¶ 1] Once again, we are asked to clarify the duties of the trial court in accepting pleas to felony charges and to determine the consequences of the trial court's failure to comply with Crim.R. 11. The first issue is what level of compliance is required of the trial court when it advises a defendant of the state's burden to prove guilt beyond a reasonable doubt at trial before accepting a plea of guilty or no contest. The second issue is whether a failure to advise the defendant

of this right is subject to harmless-error review under Crim.R. 52.¹ We affirm the judgment of the court of appeals, holding that trial courts must strictly comply with all parts of Crim.R. 11(C)(2)(c) in conducting plea colloquies and that a trial court's failure to inform a defendant of any right in that subsection invalidates the plea.

I. Case Background

[¶ 2] Appellee, Thomas L. Veney, was indicted on one count of felonious assault in violation of R.C. 2903.11 and one count of kidnapping in violation of R.C. 2905.01 along with two firearm specifications as a result of a 2004 event involving his wife, Nicole. As stated by the prosecutor at the plea hearing, Veney had come home from a night of drinking on July 8, 2004, and accused Nicole of sleeping with his cousin. Veney pulled out a loaded gun while in the bedroom, held it on Nicole, and threatened to shoot her. Nicole was lying next to her seven-year-old daughter at the time. The argument eventually moved downstairs, where Veney fired a shot into the wall. Nicole then ran out of the house, and Veney followed her. Nicole saw Veney point the gun at her and heard him fire several more shots. Nicole was able to run to a nearby business to seek help. Nicole's account was corroborated by neighbors who heard the shots and saw Veney holding a gun.

[¶ 3] Veney initially entered a not-guilty plea to all charges but later entered guilty pleas to the lesser included offense of attempted felonious assault and one firearm specification. The other count and firearm specification were

1. The certified question accepted asks whether a trial court must strictly comply with the Crim.R. 11 requirement that it inform the defendant that by entering a felony plea, the defendant waives the right to have the state prove guilt beyond a reasonable doubt. We also accepted the state's discretionary appeal, which offers two related propositions of law: (1) "A substantial compliance standard applies to the advisement required by Crim.R. 11(C)(2)(c) regarding the State's burden of proving guilt beyond a reasonable doubt at trial" and (2) "The failure to give the beyond-reasonable-doubt oral advisement required by Crim.R. 11(C)(2)(c) is subject to harmless-error review and does not always require reversal."

dismissed. The trial court accepted the pleas, found Veney guilty, and sentenced him to two years for felonious assault and three years on the firearm specification for an aggregate prison term of five years. Veney appealed, asserting that his plea was invalid because the trial court had failed to explain the nature of the charges and failed to inform him that the state had to prove him guilty beyond a reasonable doubt at trial.

[¶ 4] The Tenth District Court of Appeals reversed the judgment of the trial court because the trial court did not strictly comply with Crim.R. 11(C)(2)(c) when it failed to orally inform Veney that by entering a guilty plea he waived his constitutional right to have his guilt determined beyond a reasonable doubt at trial. *State v. Veney*, 10th Dist. No. 06AP-523, 2007-Ohio-1295, ¶ 16.² The court of appeals vacated the plea and remanded the case to the trial court for further proceedings. *Id.*

[¶ 5] The court of appeals certified its judgment as being in conflict with the judgments in *State v. Scott* (1996), 113 Ohio App.3d 401, 406-407, 680 N.E.2d 1297; *State v. Cogar* (Oct. 20, 1993), Summit App. No. CA-16234, 1993 WL 413651; and *State v. Shinkle* (Aug. 18, 1998), Scioto App. No. 98CA2560, 1998 WL 546074. We accepted the certified question “[w]hether a trial court must strictly comply with the requirement in Crim.R. 11(C) that it inform the defendant that by entering a plea, the defendant waives the right to have the state prove guilt beyond a reasonable doubt.” *State v. Veney*, 114 Ohio St.3d 1423, 2007-Ohio-2904, 868 N.E.2d 678. We also accepted the two propositions of the state within its discretionary appeal. 114 Ohio St.3d 1425, 2007-Ohio-2904, 868 N.E.2d 679.

[¶ 6] In summary, the state argues that (1) the trial court need only substantially comply with the duty to advise the defendant of the state’s obligation

2. The court of appeals did not consider Veney’s claim that he had not understood the nature of his charges. *Veney* at ¶ 16, fn. 4.

to prove the defendant guilty beyond a reasonable doubt at trial, (2) a flawed plea colloquy does not require automatic reversal, (3) Crim.R. 52 guides the court of appeals as it determines the consequences of the error being reviewed, and (4) under either a harmless-error or plain-error analysis, Veney's plea survives as a knowing, intelligent, and voluntary plea. Veney responds that the trial court's failure to orally advise him of the state's burden of proof as required by Crim.R. 11(C)(2)(c) is constitutional error affecting a substantial right that automatically invalidates his plea.

II. Legal Analysis

[¶ 7] We have clearly stated, "When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily. Failure on any of those points renders enforcement of the plea unconstitutional under both the United States Constitution and the Ohio Constitution." *State v. Engle* (1996), 74 Ohio St.3d 525, 527, 660 N.E.2d 450. The United States Supreme Court has held that a knowing and voluntary waiver of the right to jury trial, the right against compulsory self-incrimination, and the right to confront one's accusers cannot be inferred from a silent record. *Boykin v. Alabama* (1969), 395 U.S. 238, 243, 89 S.Ct. 1709, 23 L.Ed.2d 274. Crim.R. 11 was adopted in 1973, giving detailed instruction to trial courts on the procedure to follow when accepting pleas.

A. Crim.R. 11(C) Requirement for Plea Colloquy

[¶ 8] Crim.R. 11(C) governs the process that a trial court must use before accepting a felony plea of guilty or no contest. With respect to the required colloquy, Crim.R. 11(C)(2) provides:

[¶ 9] "In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following.

{¶ 10} "(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

{¶ 11} "(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

{¶ 12} "(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself."

{¶ 13} Before accepting a guilty or no-contest plea, the court must make the determinations and give the warnings required by Crim.R. 11(C)(2)(a) and (b) and notify the defendant of the constitutional rights listed in Crim.R. 11(C)(2)(c). Although the constitutional and nonconstitutional portions of this colloquy are categorized separately, we have not always distinguished between the two when examining the adequacy of the court's colloquy with a defendant. In *State v. Caudill* (1976), 48 Ohio St.2d 342, 346, 2 O.O.3d 467, 358 N.E.2d 601, we noted that the provisions of Crim.R. 11(C) must "be scrupulously and literally heeded." Two standards have developed, however, depending upon which type of right is alleged to have been the subject of the court's error in advising the defendant.

B. Substantial Compliance with Crim.R. 11(C)(2)(a) and (b)

{¶ 14} Although we had initially insisted on strict compliance with Crim.R. 11(C), we began to draw a distinction between the notification of constitutional rights and the other information required to be in the colloquy in *State v. Stewart* (1977), 51 Ohio St.2d 86, 5 O.O.3d 52, 364 N.E.2d 1163. In

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Stewart, we held that with respect to the nonconstitutional notifications required by Crim.R. 11(C)(2)(a) and 11(C)(2)(b), substantial compliance is sufficient. *Id.*

{¶ 15} Ohio's substantial-compliance standard was further developed in *State v. Strawther* (1978), 56 Ohio St.2d 298, 10 O.O.3d 420, 383 N.E.2d 900; *State v. Billups* (1979), 57 Ohio St.2d 31, 11 O.O.3d 150, 385 N.E.2d 1308; *State v. Ballard* (1981), 66 Ohio St.2d 473, 20 O.O.3d 397, 423 N.E.2d 115; and *State v. Nero* (1990), 56 Ohio St.3d 106, 108, 564 N.E.2d 474. . We explained: "Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving. Furthermore, a defendant who challenges his guilty plea on the basis that it was not knowingly, intelligently, and voluntarily made must show a prejudicial effect." (Citations omitted.) *Id.* at 108, 564 N.E.2d 474. To demonstrate prejudice in this context, the defendant must show that the plea would otherwise not have been entered. *Id.*

{¶ 16} We have also clarified that in reviewing the totality of the circumstances, a court must determine whether the defendant understood the consequences of waiver. *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, 814 N.E.2d 51, ¶ 12. Because (1) Griggs had confessed and had signed a written guilty-plea form and (2) Griggs and his counsel assured the court that he was aware of the rights he was waiving, we determined that the trial court had substantially complied with Crim.R. 11, even though the trial court did not orally advise Griggs that accepting the plea was a complete admission of guilt. *Id.* at ¶ 16, 19.

{¶ 17} Our precedent, therefore, establishes that a defendant must show prejudice before a plea will be vacated for a trial court's error involving Crim.R. 11(C) procedure when nonconstitutional aspects of the colloquy are at issue.

C. Strict Compliance with Crim.R. 11(C)(2)(c)—Notification of Constitutional Rights

{¶ 18} Despite the evolution of substantial compliance as a standard for the court's nonconstitutional notifications and determinations required by Crim.R. 11(C)(2)(a) and (b), the same is not true for the constitutional rights within Crim.R. 11(C)(2)(c). In *Ballard*, we reaffirmed *Caudill's* holding that strict, or literal, compliance was required when constitutional rights are involved. 66 Ohio St.2d at 479, 20 O.O.3d 397, 423 N.E.2d 115. Noting that the preferred procedure is for the trial court to use the language in Crim.R. 11(C), we also stated, "However, failure to [literally comply] will not necessarily invalidate a plea. The underlying purpose, from the defendant's perspective, of Crim.R. 11(C) is to convey to the defendant certain information so that he can make a voluntary and intelligent decision whether to plead guilty." *Id.* at 479-480, 20 O.O.3d 397, 423 N.E.2d 115.

{¶ 19} Crim.R. 11(C)(2)(c) requires that the defendant be advised of the right to a jury trial, the right to confront one's accusers, the privilege against compulsory self-incrimination, the right to compulsory process to obtain witnesses, and the right to require the state to prove guilt beyond a reasonable doubt. The first three are the three constitutional rights originally identified in *Boykin v. Alabama*, 395 U.S. at 243, 89 S.Ct. 1709, 23 L.Ed.2d 274. We recognized notification of the right of compulsory process to obtain witnesses as a fourth constitutional right in *Ballard*. 66 Ohio St.2d 473, 20 O.O.3d 397, 423 N.E.2d 115, at paragraph one of the syllabus.

{¶ 20} Although the right to be proven guilty by the state beyond a reasonable doubt is one of the five rights included within Crim.R. 11(C)(2)(c), we have never expressly accorded it the same stature as the other four. In fact, in a footnote we suggested that the explanation of the prosecution's burden of proof should be treated differently, subject to a standard of substantial, rather than strict,

compliance. *State v. Sturm* (1981), 66 Ohio St.2d 483, 484, 20 O.O.3d 403, 422 N.E.2d 853, fn. 2. Because of this, the state argues that a trial court need only substantially comply with the obligation to advise a defendant of the prosecution's burden of proof because the right is not specified in *Boykin* as one that is constitutionally required.

{¶ 21} Yet, as the United States Supreme Court held the year after *Boykin*, the right to have the state prove guilt beyond a reasonable doubt is a constitutionally protected right of an accused. *In re Winship* (1970), 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368. We therefore reject the state's contention and instead hold that the duty to advise the defendant of the right to have guilt proven by the state beyond a reasonable doubt is among the duties of Crim.R. 11(C)(2)(c) with which the court must strictly comply.

D. Consequences of the Court's Failure to Strictly Comply

{¶ 22} Having found that a court must strictly comply with Crim.R. 11(C)(2)(c) when advising a defendant of all five constitutional rights listed, we answer the certified question in the affirmative. Our answer to the certified question does not, however, address the consequences of the court's failure to comply. The state maintains that even if the trial court must strictly comply with Crim.R. 11(C)(2)(c) by informing Veney of the prosecution's burden of proof beyond reasonable doubt, the court's error need not automatically lead to vacation of the conviction and plea. We disagree.

{¶ 23} To properly frame this issue, we must review *Ballard*, which marked the first time that we explicitly made the connection between the strict-compliance standard and the constitutional rights in Crim.R. 11(C)(2)(c); it provides valuable insight into how the standard works in practice.

{¶ 24} In *Ballard*, we cited *Boykin v. Alabama* (1969), 395 U.S. 238, 242-243, 89 S.Ct. 1709, 23 L.Ed.2d 274, for the principles that a defendant must

be apprised of certain constitutional rights³ before his or her plea may be considered intelligent and voluntary and that plain error results when a trial court fails to explain those rights. *Ballard*, 66 Ohio St.2d at 476-477, 20 O.O.3d 397, 423 N.E.2d 115.

{¶ 25} However, we found a split of authority on the issue of “whether the complete omission of a *Boykin* constitutional right alone is cause to nullify a guilty plea.” *Ballard* at 477, 20 O.O.3d 397, 423 N.E.2d 115. Some courts held that the “failure to mention, in any manner, a *Boykin* right does not necessarily result in an involuntary and unknowing guilty plea”; others “held that for a guilty plea to be voluntarily and intelligently entered, the defendant must be informed that he is waiving his *Boykin* rights.” *Id.* at 477-478, 20 O.O.3d 397, 423 N.E.2d 115.

{¶ 26} We adopted the latter view: “[A] guilty plea is constitutionally infirm when the defendant is not informed in a reasonable manner at the time of entering his guilty plea of his [*Boykin* rights].” (Emphasis added.) *Ballard* at 478, 20 O.O.3d 397, 423 N.E.2d 115. We then crystallized this concept in the syllabus with unarguably mandatory language: “Prior to accepting a guilty plea from a criminal defendant, the trial court must inform the defendant that he is waiving his [*Boykin* rights].” (Emphasis added.) *Id.* at paragraph one of the syllabus.

{¶ 27} This requirement is tempered only slightly by the second paragraph of the syllabus: “Failure to use the exact language contained in Crim R. 11(C), in informing a criminal defendant of his [*Boykin* rights], is not grounds for vacating a plea as long as the record shows that the trial court explained these rights in a manner reasonably intelligible to that defendant.” (Emphasis added.) *Ballard* at 473, 66 Ohio St.2d 473, 20 O.O.3d 397, 423 N.E.2d 115, at paragraph

3. In view of our holding in this case, the principles applicable to the “*Boykin* rights” extend to all five rights listed in Crim R. 11(C)(2)(c) in Ohio.

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two of the syllabus, modifying *State v. Caudill* (1976), 48 Ohio St.2d 342, 346, 2 O.O.3d 467, 358 N.E.2d 601. With that holding, we recognized that a trial court can still convey the requisite information on constitutional rights to the defendant even when the court does not provide a word-for-word recitation of the criminal rule, so long as the trial court actually explains the rights to the defendant.

{¶ 28} We look to the record to determine whether a trial court strictly complied with this duty. *Id.* at 481, 20 O.O.3d 397, 423 N.E.2d 115. Following this rule, we upheld Ballard's plea even though the trial court failed to specifically mention the right to a jury trial by name, because the trial court did inform Ballard that " 'neither the Judge nor the jury' " could draw any inference if Ballard refused to testify and that he " 'was entitled to a completely fair and impartial trial under the law.' " *Id.* at 479, 481, 20 O.O.3d 397, 423 N.E.2d 115, fn. 7.

{¶ 29} Thus, pursuant to the strict-compliance standard set forth in *Ballard*, the trial court must orally inform the defendant of the rights set forth in Crim.R. 11(C)(2)(c) during the plea colloquy for the plea to be valid. Although the trial court may vary slightly from the literal wording of the rule in the colloquy, the court cannot simply rely on other sources to convey these rights to the defendant. "We cannot presume a waiver of these * * * important federal rights from a silent record." *Boykin*, 395 U.S. at 243, 89 S.Ct. 1709, 23 L.Ed.2d 274. When the record confirms that the trial court failed to perform this duty, the defendant's plea is constitutionally infirm, making it presumptively invalid. See *Ballard*, 66 Ohio St.2d at 481, 20 O.O.3d 397, 423 N.E.2d 115; *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, 814 N.E.2d 51, ¶ 12.

{¶ 30} In the present case, it is undisputed that the trial court plainly failed to orally inform Veney of his constitutional right to require the state to prove his guilt beyond a reasonable doubt. This failure to strictly comply with Crim.R. 11(C)(2)(c) renders Veney's plea invalid. We therefore affirm the holding of

court of appeals in this regard and remand the matter to the trial court for further proceedings.

III. Conclusion

{¶ 31} We hold that a trial court must strictly comply with Crim.R. 11(C)(2)(c) and orally advise a defendant before accepting a felony plea that the plea waives (1) the right to a jury trial, (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self-incrimination. When a trial court fails to strictly comply with this duty, the defendant's plea is invalid.

{¶ 32} We answer yes to the certified question and agree with the court of appeals that the trial court must strictly comply with Crim.R. 11 in advising a defendant of constitutional rights. Because the trial court did not inform Veney that he had a right to be found guilty only upon proof beyond a reasonable doubt, it failed to strictly comply with Crim.R. 11(C)(2)(c), and his plea is therefore invalid.

Judgment affirmed
and cause remanded.

PFEIFER, O'CONNOR, and O'DONNELL, JJ., concur.

LUNDBERG STRAITON, LANZINGER, and CUPP, JJ., concur in part and dissent in part.

LANZINGER, J., concurring in part and dissenting in part.

{¶ 33} I agree with the portion of the syllabus that mandates that trial courts when conducting plea colloquies must strictly comply with all parts of Crim.R. 11(C)(2)(c), including informing defendants of the right to be found guilty only upon proof beyond a reasonable doubt; I disagree with the portion of the syllabus that addresses the consequence of lack of strict compliance. I

respectfully dissent from the majority's holding that a trial court's failure to strictly comply with Crim.R. 11(C)(2)(c) requires vacation of the plea and conviction without regard to contrary evidence in the record that the plea was entered knowingly and voluntarily despite the trial court's omission.

{¶ 34} We have held that when a trial judge fails to explain the constitutional rights set forth in Crim.R. 11(C)(2)(c), the guilty or no-contest plea is invalid "under a presumption that it was entered involuntarily and unknowingly." (Emphasis added.) *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, 814 N.E.2d 51, ¶ 12; see also *State v. Nero* (1990), 56 Ohio St.3d 106, 107, 564 N.E.2d 474, citing *Boykin v. Alabama* (1969), 395 U.S. 238, 242-243, 89 S.Ct. 1709, 23 L.Ed.2d 274. This court has never held, until today, that this presumption is irrebuttable or that a plea must be vacated automatically when the trial court fails to orally explain a constitutional right.

{¶ 35} Interpreting Crim.R. 11(C)(2)(c) as an absolute rule for which imperfect compliance should lead to automatic vacation of a plea in every case, the majority cites *State v. Ballard* (1981), 66 Ohio St.2d 473, 20 O.O.3d 397, 423 N.E.2d 115. But the majority's reasoning seems to conflate a single missing oral advisement with the entirely "silent record" referred to *Boykin*. *Ballard*, however, did not foreclose an opportunity for the state to show that there was not a silent record with respect to *Boykin* rights. Just as the state is allowed to rebut the presumption that a warrantless search is unreasonable, the state should be able to rebut the presumption that a plea is involuntary and unknowing when a judge fails to mention one of the constitutional rights in Crim.R. 11(C)(2)(c).

{¶ 36} Allowing the state the chance to rebut the presumption that a defendant has been prejudiced does not confuse the standards of strict compliance and substantial compliance. The majority recognizes that under the substantial compliance standard, the burden is on the *defendant* to show prejudice, which means showing that the plea would otherwise not have been entered. *Nero*, 56

Ohio St.3d at 108, 564 N.E.2d 474. A requirement that the *state* must overcome a presumption of the plea's invalidity when the trial court does not strictly comply with Crim.R. 11(C)(2)(c) means that the defendant need no longer show prejudice. The state simply is given an opportunity to establish through other evidence in the record that the defendant's plea was still knowing and voluntary.

{¶ 37} Moreover, federal law does not require automatic vacation of a plea when a judge fails to inform a defendant of a *Boykin* right. See *United States v. Fonn* (2002), 535 U.S. 55, 122 S.Ct. 1043, 152 L.Ed.2d 90. Instead, the court reviews the entire record—including written pleas and statements that constitutional rights were reviewed with counsel—to determine whether the defendant understood and voluntarily made the plea. *Id.* at 74-75. We have previously adopted this rule in *Ballard*, acknowledging that when determining whether a defendant was adequately informed of his constitutional rights under Crim.R. 11, a court must review the entire record and not just determine whether the judge recited the exact language in the rule. 66 Ohio St.2d 473, 20 O.O.3d 397, 423 N.E.2d 115, paragraph two of the syllabus.

{¶ 38} To the contrary, the majority opinion now concludes that strict compliance brooks no mistakes by the trial court in its oral recitation to the defendant. In its overly formalistic view of the consequences of failure to strictly comply with Crim.R. 11(C)(2)(c), the majority rejects the idea that a trial court may have informed a defendant of his or her constitutional rights in a number of ways, including written materials that have been reviewed with counsel and signed and assented to in open court. The trial court's overriding obligation has been to ensure that a plea is entered in a knowing and intelligent manner. *State v. Engle* (1996), 74 Ohio St.3d 525, 527, 660 N.E.2d 450. But now, the majority's holding will invalidate convictions based upon a single omitted oral statement of the trial court, no matter whether the record would otherwise show that the defendant understood and appreciated all constitutional rights being waived.

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{¶ 39} Because I disagree with these draconian consequences as applied to every case, I respectfully dissent. I would hold that the state should have an opportunity to rebut the presumption that a plea is unknowing and involuntary with evidence from the entire record.

LUNDBERG STRATTON and CUPP, JJ., concur in the foregoing opinion.

Ron O'Brien, Franklin County Prosecuting Attorney, and Steven L. Taylor, Assistant Prosecuting Attorney, for appellant.

Ycira R. Venters, Franklin County Public Defender, and John W. Keeling, Assistant Public Defender, for appellee.
